

Appl. No. : **10/649,480**
Filed : **August 27, 2003**

REMARKS

Claims 2-11, 13-15 and 35 have been cancelled. Claims 1 and 26 have been amended. Claim 26 is amended to correct a typographical error. Claims 1, 12, and 16-34 and 36 are now pending in this application. Claims 16, 18 and 19 are withdrawn from consideration. Support for the amendments is found in the existing claims and the specification as discussed below. Accordingly, the amendments do not constitute the addition of new matter. Applicant respectfully requests the entry of the amendments and reconsideration of the application in view of the amendments and the following remarks.

Election/Restriction

Applicants gratefully acknowledge the Examiner's rejoinder of Species F and G. Claims 16, 18, and 19 remain withdrawn from consideration.

Product-by-process limitations

The Examiner's comments on product-by-process claims are duly noted. With this amendment, the product-by-process limitations have been deleted. This amendment has necessitated correction of the inventorship. A request for correction of inventorship under 37 C.F.R. § 1.48(b) accompanies this response.

Rejection under 35 U.S.C. § 102(b)

Claims 1, 3-11, and 13-15 are rejected under 35 U.S.C. § 102(b) as being anticipated by Pu et al. (Circulation 1993, Vol. 88, No. 1, pp. 208-215).

Without acquiescing to the remarks set forth in the Office Action, Applicant has amended claim 1 to incorporate the limitations of claim 2.

In view of Applicant's amendment, reconsideration and withdrawal of the above ground of rejection is respectfully requested.

Rejection under 35 U.S.C. § 102(b)

Claims 1, 3-11, and 13-15 are rejected under 35 U.S.C. § 102(b) as being anticipated by Banai, et al. (Cir. Res. 1991, Vol. 69, No. 1, pp. 76-85).

Without acquiescing to the remarks set forth in the Office Action, Applicant has amended claim 1 to incorporate the limitations of claim 2.

In view of Applicant's amendment, reconsideration and withdrawal of the above ground of rejection is respectfully requested.

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Rejection under 35 U.S.C. § 102(a)

Claims 1, 3-11, 13-15, 20-22, 33 and 36 are rejected under 35 U.S.C. § 102(a) as being anticipated by Schumacher, et al. (Circulation, Feb, 1998, Vol. 97, pp. 645-650).

Applicant presents the attached Declaration under In re Katz to overcome this ground of rejection. Applicant is one of the co-authors of the cited reference. As set forth in the attached Declaration, the three co-authors worked under the direct guidance and direction of Applicant and did not contribute to the inventive concept of the claimed invention. Accordingly, the claimed invention was not described in a printed publication before the invention thereof by Applicant.

In view of the attached Katz Declaration and the Remarks above, reconsideration and withdrawal of this ground of rejection is respectfully requested.

Rejection under 35 U.S.C. § 102(a)

Claims 1, 3-11, 13-15 are rejected under 35 U.S.C. § 102(a) as being anticipated by Htun, et al. (J. Mol. Cell. Cardio. April 1998, Vol. 30, pp. 867-877) in light of the disclosure of Battegay, E.J. (Mol. Med. 1995, Vol. 73, pp. 333-346).

Applicant submits herewith a Declaration under 37 C.F.R. § 1.131 which was submitted in parent Application No. 09/358,780. The Declaration established that Applicant had completed his invention before January 9, 1997 which is before the date of the Htun, et al. reference, i.e. April 1998.

In view of Applicant's submitted Declaration under 37 C.F.R. § 1.131 and Remarks, reconsideration and withdrawal of the above ground of rejection is respectfully requested.

Rejection under 35 U.S.C. § 103(a)

Claims 1-15, 17, 20-34, and 36 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Schumacher, et al. (Circulation, Feb, 1998, Vol. 97, pp. 645-650) for claims 1, 3-11, 13-15, 20-22, 33, and 36, Jaye, et al. (U.S. Patent No. 5,571,790A) and Fasol, et al. (J. Thorac. Cardiovasc. Surg. 1994, Vol. 107, pp 1432-1439).

This ground of rejection is believed to be obviated by the Declaration under In re Katz, submitted herewith and as discussed above. Accordingly, withdrawal of this ground of rejection is respectfully requested.

CONCLUSION

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In view of Applicants' amendments to the claims and the foregoing Remarks, it is respectfully submitted that the present application is in condition for allowance. Should the Examiner have any remaining concerns which might prevent the prompt allowance of the application, the Examiner is respectfully invited to contact the undersigned at the telephone number appearing below.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: Aug 23, 2005

By: Che S. Chereskin
Che Swyden Chereskin, Ph.D.
Registration No. 41,466
Agent of Record
Customer No. 20,995
(949) 760-0404

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